THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 9661 of 2005

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Dated: 27-10-2005

Between:

1.Hullappa, S/o. Dondia, R/o. Jukkal Village & Mandal, Nizamabad District and others.

..PETITIONER

AND

1 The Secretary, Irrigation & Power (Irr.IV) Department,
Government of Andhra Pradesh, Secretariat, Hyderabad and another.

..RESPONDENTS

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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ORDER:

This writ petition has been filed seeking a direction to the respondents to deposit the decretal amount in OP No.87 of 1987 to the credit of E.P.No.5 of 2004 on the file of Senior Civil Judge, Bodhan, Nizamabad District.

The second petitioner has given sworn affidavit in support of the writ petition. It is stated in the affidavit that the lands admeasuring Ac.82-01 guntas situated at Jukkal village have been acquired by the respondents herein for the purpose of construction of Jukkal Reservoir by Notification under Section 4 (1) of the Land

Acquisition Act dated 27-10-1977. An award came to be passed on 15.9.1978 fixing the market value at the rate of Rs.3,000/- per acre. A reference was made to the Civil Court under Section 18 of the Land Acquisition Act and the same was numbered as OP No.87/87. The Civil Court enhanced the compensation from Rs.3,000/- to 10,000/- per acre along with the statutory benefits by an order dated 13.8.1997. The appeal filed against the judgment, dated 13.8.1997 passed in OP No.87/87 ended in dismissal on 29.6.1998 vide A.S.No.225 of 1992 on the file of this Court. Thereafter, the 3rd respondent filed S.L.P (Civil) No.23/99 unsuccessfully. The petitioners filed E.P.No.5 of 2005 for realization of the amount as per the decree granted in O.P.87/87. They also attached movable properties of the 3rd respondent. Since the petitioners are not in a position to realize the amount by taking out execution proceedings, they approached this Court by invoking the extra ordinary jurisdiction under Article 226 of the Constitution of India, with the relief stated supra.

Respondents 2 and 3 filed counter affidavit. I deem it appropriate to refer para 8 and 9 of the counter-affidavit and it is thus:

> "*In reply to the averments made in Para 10 of the petitioners affidavit, it is to submit that it is not true to say that as the L.A.O and requisitioning Dept constantly pursuing the matter with the government I & CAD Dept, A.P., Secretariat, Hyderabad for releasing the fund. In view of the facts stated above there is no fault on the part of the respondents.*
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> *In reply to the averments made in Para 11,12 & 13 of the petitioners affidavit it is to submit that the Executive Engineer ID, IB Division, Nizamabad is personally looking into the matter with Higher Officials for releasing the fund.*Therefore, the writ petition filed by the petitioners deserves no consideration. Hence, the writ petition may be dismissed."

Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition.

The learned counsel for the petitioner submits that the petition is maintainable despite the availability of alternate and efficacious or statutory remedy to the petitioners in realization of the amount granted in OP 87/87. He places reliance on the larger Bench decision of this Court in **Bhamidipati Annapoorna Bhavani v. Land Acquisition Officer, Yeluru Reservoir Project** ()and Division Bench of

this Court in W.P.2181 of 2005 i n **Velugode Balancing Reservoir (Telugu Ganga Project) Munaka Baditha Rythanga Sangham rep., by its Secretary, W.Siva Rami Reddy and four others vs., Government of A.P.**

There cannot be any dispute with regard to proposition of Law that the alternate statutory remedy itself is not a bar in entertaining a writ petition in the given facts and circumstances of the case.

The facts of each case are to be considered in granting relief sought for by the parties. The petitioners have filed E.P. 5 of 2004 seeking for realization of the amount granted in the OP and in the said EP., they sought for sale of the movable properties of the respondent. It appears that the properties have been attached and sale proclamation has been issued. The E.P stands posted to 22.11.2005 for sale of the attached properties vide certified copy of the proceeding sheet in EP 5 of 2004 placed on record.

In that view of the matter, I deem it not appropriate to give any direction to the petitioner with regard to the deposit of the amounts, which the petitioners are entitled. Soon after the outcome of the Execution Proceedings, the petitioners are at liberty to approach this Court seeking necessary direction.

With the above observation, the writ petition is disposed of.

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27-10-2005

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THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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